

STATE OF MICHIGAN
COURT OF APPEALS

In re application of CONSUMERS ENERGY
for reconciliation of costs

TES FILER CITY STATION LIMITED
PARTNERSHIP,

Appellant,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

CONSUMERS ENERGY COMPANY,

Petitioner-Appellee,

and

ATTORNEY GENERAL,

Appellee.

In re application of CONSUMERS ENERGY
COMPANY for 2011 reconciliation

CADILLAC RENEWABLE ENERGY, LLC,
GENESEE POWER STATION LIMITED
PARTNERSHIP, GRAYLING GENERATING
STATION LIMITED PARTNERSHIP,
HILLMAN POWER COMPANY, TES FILER
CITY STATION LIMITED PARTNERSHIP,
VIKING ENERGY OF LINCOLN, INC, and
VIKING ENERGY OF MCBAIN, INC,

FOR PUBLICATION
May 28, 2015

No. 314361
MPSC
LC No. 00-016045-R

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

CONSUMERS ENERGY COMPANY,

Petitioner-Appellee.

No. 316868

MPSC

LC No. 00-016432-R

BEFORE: RONAYNE KRAUSE, P.J., AND WILDER AND STEPHENS, JJ.

WILDER, J., (*concurring in part and dissenting in part*)

I join with the majority in the analysis and result reached in part V of the majority opinion which holds that MCL 460.6a(8) “should be construed to mean that annual adjustments to the \$1,000,000 cap shall be calculated by applying the CPI rate for the PSCR year at issue to the \$1,000,000 cap as adjusted in prior years, or by applying the cumulative CPI rate from 2009 forward to the \$1,000,000 cap.” However, I respectfully disagree and dissent from the analysis and outcome reached in part IV of the majority opinion. Rather, I agree with Judge Whitbeck’s dissent in *Application of Consumers Energy Co for Reconciliation of 2009 Costs (On Reconsideration)*, 307 Mich App 32; 859 NW2d 216 (2014), and also would find that the “NOx requirements were not implemented until 2009 because they were not effective until 2009,” and that “[t]herefore, the exception in MCL 460.6a(8) applied to TES Filer.”

/s/ Kurtis T. Wilder